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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for Approval of its Electric Vehicle Infrastructure and Education Program (U39E)	A.15-02-009 (Filed February 9, 2015)

REPLY BRIEF OF THE CONSUMER FEDERATION OF CALIFORNIA CONCERNING PG&E'S ELECTRIC VEHICLE INFRASTRUCTURE AND EDUCATION PROGRAM

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Pursuant to Rule 13.11 of the California Public Utility Commission (Commission or CPUC) Rules of Practice and Procedure, Consumer Federation of California (CFC) submits this reply brief in response to opening briefs on Administrative Law Judge (ALJ) Darwin Farrar's Ruling on June 17, 2016.

I. Introduction, Background, and Procedural History

On February 9, 2015, Pacific Gas and Electric Company (PG&E) filed Application (A.) 15-02-009, seeking approval of its proposed Electric Vehicle (EV) Infrastructure and Education Program (EV Program). In this EV Program application, Pacific Gas and Electric Company (PG&E) proposed to deploy 25,000 Level-2 Alternating Current (L2) EV chargers and 100 Direct Current Fast Chargers (DCFCs) at approximately 2,600 sites in its service territory.[1]

In September 2015, the Assigned Commissioner and Administrative Law Judges (ALJs) issued a scoping memo and ruling (Ruling) directing PG&E to restructure its EV Program into two phases: Phase 1 as a pilot program with a Supplemental Application to only address Phase 1 issues and Phase 2 as the full-scale program.[2]

In response to the Ruling, PG&E filed its supplemental testimony in which it proposed two programs for Phase 1: (1) a "compliant" proposal that plans to install 2,510 charging stations over 24 months from the date of initial deployment and including 18 months of data collection.[3] PG&E estimates the capital costs and expenses of the

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[1] PG&E Testimony, Chapter 2, pp. 2-4, 2-5.
[2] Joint Assigned Commissioner and Administrative Law Judges' Scoping Memo and Ruling, p. 9.
[3] Pacific Gas and Electric Company's Supplement to Application Pursuant to Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling p. 1.

Compliant Proposal to be $70 million and $17 million, respectively;[4] and (2) an "Enhanced" Proposal that would install, collect and analyze data from 7,530 charging stations over a 36 month period from the date of initial deployment, including 30 months of data collection.[5] PG&E estimates the Enhanced Proposal capital costs to be $187 million and expenses to be $35 million.[6]

On March 21, 2016, PG&E and 13 other parties submitted a Settlement Agreement. Essentially, the Settlement Agreement proposed a target of 7,600 level 2 and DCFC ports at a cost of $160 million. The settlement amounts to little more than a stipulation among aligned parties supporting a revised version of the "enhanced" PG&E proposal as previously described in PG&E's original and supplemental testimony.

On June 17, 2016, parties filed opening briefs in response to and compliance with Administrative Law Judge (ALJ) Darwin Farrar's Ruling setting the schedule for opening briefs.

II. Reply Comments

Through the proposed settlement, PG&E and the joint settling parties ("joint parties" or "settling parties"): (1) reduce the size and cost of PG&E's original EV proposal by 75 percent, from $654 million to $160 million and proportional to the size and cost of the SDG&E approved program; (2) include modifications to PG&E's original proposal in line with changes that the Commission ordered to SDG&E's and SCE's original EV proposals; and (3) assert that the terms meet the "balancing test" applied by

[4] Pacific Gas and Electric Company's Supplement to Application Pursuant to Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling p. 1.
[5] *Ibid.* p. 1.
[6] *Ibid.* p. 1-2,4.

the Commission to utility ownership in D.16-01-045.[7] Also, throughout the settlement, the joint settling parties rely heavily on the Governor's Executive Order (B-16-2012) ("Executive Order"), certain Public Utilities Code sections (PUC Code), and earlier decisions in the San Diego Gas and Electric (SDG&E) and Sothern California Edison (SCE) applications to establish the need for and the adoption of the proposed Vehicle Grid Integration (VGI) Program and settlement.[8] It is important to remember, however, the Executive Order does not govern the CPUC, the CPU Code sections are not as rigid as the settling parties suggest, and the applications for each of the other investor owned utilities (IOUs), determined to be sufficiently different not to warrant consolidation, are not entirely applicable to PG&E.[9]

First, according to Article XII, Section 5 of the California Constitution, the Legislature only has plenary power "to confer additional authority and jurisdiction upon the commission," the power to "establish the manner and scope of review of commission action," and the ability to remove a Commissioner.[10] Otherwise, the Governor's authority over the agency is limited.[11] The Governor, therefore, is not "empowered, by executive order or otherwise, to amend the effect of, or to qualify the operation of existing legislation."[12] It is understandable the Commission desires to give

[7] A.15-02-009. Opening Brief of PG&E (U39E), Alliance of Automobile Manufacturers, American Honda Motor Co. Inc., Center for Sustainable Energy, Coalition of California Utility Employees, Greenlots, The Greenlining Institute, Marine Clean Energy, Natural Resources Defense Council, Plug in America, General Motors LLC, Sierra Club, and Sonoma Clean Power (Settling Parties' Joint Opening Brief). June 7, 2016. pp.4-6.
[8] Pacific Gas and Electric Company's (U 39 E) Electric Vehicle Infrastructure and Education Program Application. pp.1-3. A.15-02-009. Settling Parties' Joint Opening Brief. June 17, 2016. pp.23-24.
[9] Application of PG&E for Electric Vehicle Infrastructure and Education Program, pp. 1-3.
[10] Cal. Const. art. XII, §§ 1 and 5.
[11] Id. at § 1.
[12] Lukens v. Nye (1909) 156 Cal. 498, 503-504.

consideration to the Executive Order, but it is not an enforceable order and must be considered within the greater context of the legislative framework governing investor owned utilities, their proposed ownership of EV charging infrastructure, and the reasonableness of the rates and fees. [13]

Secondly, the settling parties urge the Commission to rely "heavily" on Public Utilities Code section 740.8.[14] The parties insist the program adopted in the settlement meets the standards set forth in §740.8 and, therefore, should be adopted. Yet, the terms of §740.8 are broad. The section defines what it means for something to be in the "interests" of ratepayers, requiring safe, reliable, less costly services which improve efficiency, reduce pollution and greenhouse gases, and encourage alternative fuel uses and creates jobs.[15] While the Charge Smart and Save program may "far exceed the requirements of Public Utilities Code Section 740.8," the Commission must consider other factors in determining whether the pilot program is reasonable. There is nothing in the language of the section which would lead to the conclusion that utilities must own all of the charging infrastructure for the code section to be satisfied or that that outcome is reasonable. If applied correctly, the terms can be and are more accurately met through the reduction of the overall cost of the pilot and permitting utilities to provide and own only the make-ready infrastructure.

Lastly, In their opening brief, the settling parties request the Commission adopt the proposed settlement (settlement) in which they claim to have taken into consideration "the guidance the Commission has provided in its SCE and SDG&E

[13] Article XII, Section 5
[14] A.15-02-009. Settling Parties' Joint Opening Brief. June 17, 2016. Pp.21-22.
[15] Public Utilities Code Section 740.8 (a), (b)(1)-(5).

decisions."[16] Yet, early in Rulemaking 13-11-007, the Commission denied a motion to consolidate the applications and the Rulemaking.[17] The Commission approved consolidation of only SDG&E's Application and denied consolidation of both PG&E and SCE's applications on the grounds that each of the electric utilities' proposals contained different business models and that each application should be examined on a case specific basis.[18] Therefore, PG&E's argument that because the Charge Smart and Save settlement terms are somewhat similar to the other IOU settlements which have already been adopted by the Commission, the PG&E settlement should be adopted, is unreasonable. While it is appropriate to look to the other approved IOU pilots for guidance, the terms of PG&E's suggested pilot should be reviewed by the Commission independent of the other decisions.[19] PG&E's pilot has been determined to be unique and in need of individual analysis and the Commission should give the settlement terms the appropriate analysis for reasonableness.

III. CONCLUSION

Again, CFC recommends the Commission reject the original application and enhanced proposal because they each place an unreasonable cost burden on the ratepayers and their scale and ratepayer funded infrastructure may discourage

[16] A.15-02-009. Settling Parties' Joint Opening Brief. June 7, 2016. p. 3.
[17] There were ultimately three motions for consolidation: (1) "Marin Clean Energy Motion to Consolidate Proceedings;" (2) "The Office of Ratepayer Advocates' Motion to Consolidate Proceedings and Implement Its Alternative Proposal for Deployment of Investor Owned Utility Electric Vehicle Infrastructure Pilots;" and (3) the "Joint Party Motion to Amend the Scope of the Rulemaking."
[18] A.14-04-014, R.13-11-007. Joint Assigned Commissioner and Administrative Law Judges' Ruling on Three Motions. May 28, 2015. pp.10-11.
[19] A.15-02-009. Settling Parties' Joint Opening Brief. June 7, 2016. pp. 22-23.

competition in the EV charging market. The Commission should also reject the Settlement Agreement because it is not reasonable or in the public interest.

Respectfully Submitted,

_____/s/_____

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